UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEN WANG,

Plaintiff,

-against-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, d/b/a BELLEVUE HOSPITAL CENTER, et ano,

Defendants.

REPORT AND RECOMMENDATION TO THE HONORABLE LORNA G. SCHOFIELD

13cv3236-LGS-FM

FRANK MAAS, United States Magistrate Judge.

Pro se plaintiff Fen Wang ("Wang") brings this action pursuant to 42 U.S.C. § 1983 ("Section 1983") and New York law against defendants New York City Health and Hospitals Corporation and Memorial Hospital of South Bend ("Memorial Hospital"). (See ECF No. 40 (Second Amended Complaint ("SAC")) at 1). In the SAC, Wang alleges, inter alia, that Memorial Hospital committed medical malpractice while she was receiving care at its medical facility in Indiana. (Id. at 1-9). Memorial Hospital has now moved to dismiss the SAC pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (See ECF No. 106). For the reasons set forth below, that motion should be granted, but on a basis other than the law of the case doctrine upon which Memorial Hospital relies.

I. Procedural History

Memorial Hospital has twice previously moved to dismiss Wang's claims against it on statute of limitation grounds. (See ECF Nos. 19-20, 43-44). On September 20 and November 11, 2013, respectively, Your Honor granted those motions. (See ECF Nos. 38, 45). By Order dated May 16, 2014, however, Your Honor noted that, "to the extent [Wang] wishe[s] to bring claims for fraud or intentional tort against Memorial Hospital, these claims are not time barred, and [Wang] would be permitted to assert them in a [third] amended complaint." (ECF No. 70).

During a pretrial conference on February 22, 2016, Wang requested that she be allowed to serve Memorial Hospital again in light of Your Honor's Order. (See ECF No. 103). Although Wang had not yet filed a third amended complaint, I permitted Wang to effectuate service. Now that she has done so, the Court can act, sua sponte, to dismiss her claims in the SAC against Memorial Hospital based on a more fundamental flaw – namely, this Court's lack of personal jurisdiction. See 28 U.S.C. § 1915(e)(2).

II. Applicable Law

For a court to assert personal jurisdiction over a party, there must be statutory authority for it to act and its exercise of jurisdiction must not offend constitutional due process standards. Best Van Lines, Inc. v. Walker, 490 F.3d 239, 242 (2d Cir. 2007). Regardless of whether a case arises under diversity jurisdiction or federal question jurisdiction pursuant to Section 1983, a court applies the forum state's personal jurisdiction rules. See Agency Rent A Car Sys., Inc. v. Grand Rent A Car Corp., 98 F.3d

25, 29 (2d Cir. 1996); Anderson v. Bd. of Regents of Higher Educ. of Commonwealth of Mass., No. 93 Civ. 5162 (WK), 1994 WL 507741, at *5 n.1 (S.D.N.Y. Sept. 15, 1994) (citing Mareno v. Rowe, 910 F.2d 1043, 1046 (2d Cir. 1990)).

Under the New York Civil Practice Law and Rules ("CPLR"), New York recognizes two categories of personal jurisdiction. CPLR § 301 permits a court to exercise general jurisdiction based upon "a defendant's contacts with the forum even though those contacts [may be] unrelated to the action before the court." Langenberg v. Sofair, No. 03 Civ. 8339 (KMK), 2006 WL 2628348, at *2 (S.D.N.Y. Sept. 11, 2006). CPLR § 302 provides for specific jurisdiction "when the defendant's activities in the forum are the subject of the action." Id.

Pursuant to CPLR § 301, a defendant is subject to suit in New York "if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted." Landoil Res. Corp. v. Alexander & Alexander Servs., Inc., 77 N.Y.2d 28, 33 (1990) (internal quotation marks omitted). CPLR § 302, on the other hand, permits a court, in certain circumstances, to exercise jurisdiction over a non-domiciliary who commits a tort outside the state causing injury to a person or property in the state. See CPLR § 302(a)(3). "Courts determining whether there is injury in New York sufficient to warrant [CPLR] § 302(a)(3) jurisdiction must generally apply a situs-of-injury test, which asks them to locate the 'original event which caused the injury.'" Whitaker v. Am. Telecasting, Inc., 261 F.3d 196, 209 (2d Cir. 2001) (quoting Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 791 (2d

Cir. 1999)). "The situs of injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff." Hermann v. Sharon Hosp., Inc., 522 N.Y.S.2d 581, 583 (2d Dep't 1987) (emphasis added).

III. Discussion

In the SAC, Wang claims that Memorial Hospital committed medical malpractice in connection with two spinal surgeries performed there on August 24 and 26, 2009. (See SAC ¶¶ III(C)(1-15)). Although she clearly feels aggrieved, New York law does not permit this Court to consider this claim.

As an initial matter, there clearly is no basis for asserting general personal jurisdiction over Memorial Hospital in this forum. Critically, Wang has not asserted that Memorial Hospital has "engaged in such a continuous and systematic course of doing business [in New York] that a finding of its presence in this jurisdiction is warranted." See Landoil, 77 N.Y.2d at 33. Indeed, the SAC suggests precisely the opposite. (See SAC); see also https://qualityoflife.org/about/ (last visited Mar. 30, 2016) (describing Memorial Hospital as a "community-owned, not-for-profit" "526-bed" hospital "based in South Bend, Indiana").

There also is no basis for the Court to exercise specific personal jurisdiction over Memorial Hospital. As the SAC establishes, the "original event" giving rise to Wang's claims against Memorial Hospital occurred in Indiana, where she underwent surgery and the first effects of the alleged medical malpractice manifested themselves.

(See, e.g., SAC ¶ III(C)(11) ("After [the second surgery], I had horrible low[er] back pain.") (emphasis in original)). It follows that this Court lacks jurisdiction under CPLR § 302(a)(3) to hear her claims. See DiStefano v. Carozzi N. Am., Inc., 286 F.3d 81, 84-85 (2d Cir. 2001) (quoting Bank Brussels, 171 F.3d at 792) (the original event occurs "where the first effect of the tort . . . that ultimately produced the final . . . injury is located"); Paterno v. Laser Spine Inst., 24 N.Y.3d 370, 381 (2014) ("[T]he location of the original event which caused the injury [is] . . . Tampa, Florida, where plaintiff underwent the surgeries that are the basis for his medical malpractice claim."). I note that this result would not be altered even if Wang were to amend the SAC to assert intentional tort or fraud claims against Memorial Hospital because the first effect of any conduct on the part of Memorial Hospital was in Indiana. See DiStefano, 286 F.3d at 84-85.

In sum, there is no basis upon which Wang could pursue claims against Memorial Hospital in this jurisdiction even if she were able to overcome the statute of limitations defense asserted in Memorial Hospital's prior motions. Moreover, because there is no question that the jurisdictional problems cannot be cured through repleading, Wang should not be permitted to file a third amended complaint. See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000) ("The problem with [the plaintiff's] causes of action is substantive; better pleading will not cure it.").

IV. Conclusion

For the foregoing reasons, Memorial Hospital's motion to dismiss the SAC, (ECF No. 106), should be granted, albeit on grounds different than those upon which Memorial Hospital relies.

In its papers, Memorial Hospital also asks the Court to enjoin Wang from naming it as a defendant in any further filings. (See id. ¶ 6). Since Your Honor had indicated that Wang could attempt to bring additional claims against Memorial Hospital, there is no basis for such an injunction based on her conduct to date. Wang should be cautioned, however, that any further attempt to name Memorial Hospital in a pleading in this District could lead to the imposition of sanctions.

V. Notice of Procedure for Filing Objections to this Report and Recommendation

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Lorna G. Schofield, to my chambers at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be directed to Judge Schofield. The failure to file timely objections will result in a waiver of those

objections for purposes of appeal. See Thomas v. Arn, 474 U.S. 140 (1985); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b).

SO ORDERED.

Dated: New York, New York
April 18, 2016

FRANK MAAS
United States Magistrate Judge

Copies to:

Defendants' counsel (via ECF)

Fen Wang (via email)
Email: fenwang0102@hotmail.com